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Attorneys for Defendants City of South San Francisco,  
 South San Francisco Police Department, and  
 Mark Raffaelli

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

HOWARD ZIMMERMAN and WILLIAM  
 CARTER,

Plaintiffs,

v.

CITY OF SOUTH SAN FRANCISCO,  
 SOUTH SAN FRANCISCO POLICE  
 DEPARTMENT, MARK RAFFAELLI, and  
 DOES 1 through 10, inclusive,

Defendants.

Case No. C073623 WHA

**JOINT CASE MANAGEMENT  
 STATEMENT AND PROPOSED  
 ORDER**

Date: October 18, 2007  
 Time: 11:00 a.m.  
 Courtroom: 9  
 Judge: Hon. William H. Alsup

Complaint Filed: July 13, 2007

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

**1. Jurisdiction and Service**

Federal jurisdiction is proper because Plaintiffs allege violation of federal law. At this time, no issues exist regarding personal jurisdiction or venue. The parties do not anticipate service on any additional parties.

**2. Facts**

Plaintiffs Howard Zimmerman and William Carter are currently employed as police officers for the City. They claim that the City, its Police Department and Defendant Mark

Raffaelli violated their rights under Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") 1994 (USERRA) § 4311 and the California Military & Veterans Code § 394 by denying them promotional opportunities and reemployment in their previous status when they returned from active military duty in Iraq in 2006. They also claim that Defendants created a hostile environment for them due to their service in the military.

Factual issues in dispute include:

a) whether Officers Zimmerman and Carter were denied promotional opportunities and reemployment because of their service in the military; and

b) whether Defendants created a hostile work environment for Officers Zimmerman and Carter because of their service in the military.

### **3. Legal Issues**

a) whether the City's actions violated USERRA

b) whether the City's actions violated the California Military & Veterans Code

### **4. Motions**

No current motions are pending. Defendants anticipate filing a motion for summary judgment or partial summary judgment.

### **5. Amendment of Pleadings**

The parties do not anticipate amending any of their current pleadings.

### **6. Evidence Preservation**

The parties have taken all necessary steps to preserve relevant evidence. Counsel for defendants have notified defendants of the need to preserve evidence and requested all documents responsive to the disclosure requirements of FRCP 26(a). Counsel for Plaintiffs have notified Plaintiffs of the need to preserve evidence and requested all documents responsive to the disclosure requirements of FRCP 26(a).

### **7. Disclosures**

The parties intend to comply with the disclosure requirements of FRCP 26(a).

### **8. Discovery**

1 No discovery has yet been taken in this action. The parties agree to the following  
2 discovery plan:

- 3 a. Rule 26 exchanges, by federal express, other overnight, or hand delivery on  
4 October 10, 2007.
- 5 b. Depositions of named parties to be completed on or before May 1, 2008.
- 6 c. Depositions of non-parties to be completed on or before the discovery cut-off  
7 on June 30, 2008. The 7 hour limitation on each of these depositions may be  
8 waived or extended only by the written stipulation of the parties' counsel or an  
9 order of the Court.
- 10 d. Subpoenas duces tecum (documents only) to be served on non-party  
11 witnesses with response dates due prior to the discovery cut-off on June 30,  
12 2008.
- 13 e. Designation of expert witnesses by mail on or before May 1, 2008.
- 14 f. Depositions of expert witnesses, if any, to be completed on or before June 30,  
15 2008. The 7 hour limitation on each of these depositions may be waived or  
16 extended only by the written stipulation of the parties' counsel or an order of  
17 the Court.
- 18 g. Discovery cut-off: June 30, 2008.

18 **9. Class actions**

19 This action is not a class action.

20 **10. Related cases**

21 The parties are not aware of any pending related cases or proceedings.

22 **11. Relief**

23 Plaintiff Zimmerman seeks the following relief:

24 a. An injunction prohibiting Defendants from engaging in future violations of the  
25 USERRA and the California Military and Veterans Code;

26 b. For compensatory and general damages, including back pay, fringe benefits,  
27 and emotional distress, to the fullest extent permitted under USERRA and California  
28 Military and Veterans Code;

c. Liquidated damages and monetary penalties to the fullest extent permitted under USERRA (e.g. 38 U.S.C. §4323(d)-(e)) and California Military and Veterans Code §394;

d. Litigation costs, expenses, attorneys' fees to the fullest extent permitted under USERRA (e.g. 38 U.S.C. §4323(h)) and California Military and Veterans Code §394(g);

e. For costs of suit incurred herein;

f. For such other and further relief as the Court may deem proper.

Plaintiff Carter seeks the following relief:

a. An injunction prohibiting Defendants from engaging in future violations of the USERRA and the California Military and Veterans Code;

b. Immediate promotion, with full seniority and other benefits, to the position of Police Lieutenant or Police Captain;

c. For compensatory and general damages, including back pay, fringe benefits, and emotional distress, to the fullest extent permitted under USERRA and California Military and Veterans Code;

c. Liquidated damages and monetary penalties to the fullest extent permitted under USERRA (e.g. 38 U.S.C. §4323(d)-(e)) and California Military and Veterans Code §394;

d. Litigation costs, expenses, attorneys' fees to the fullest extent permitted under USERRA (e.g. 38 U.S.C. §4323(h)) and California Military and Veterans Code §394(g);

e. For costs of suit incurred herein;

f. For such other and further relief as the Court may deem proper.

i. **Settlement and ADR**

Defendants agree to private mediation, to take place prior to January 31, 2008.

**13. Consent to Magistrate Judge**

The parties do not consent to assignment to a magistrate judge.

**14. Other References**

The parties do not believe other references are necessary.

**15. Narrowing of the issues**

The parties do not believe the issues can be narrowed at this time, but agree to revisit this issue after mediation.

**16. Expedited Schedule**

The parties do not believe this case needs to be handled on an expedited basis.

**17. Jury Trial**

Plaintiffs have demanded a jury trial.

**18. Scheduling**

Please see number 8, above, for discovery plan and schedule. The parties request a trial date in early August, 2008. The parties estimate that the trial will last five (5) to seven (7) days.

**19. Disclosure of Non-party Interested Entities or Persons**

None.

Dated: October 10, 2007

LAW OFFICES OF DANIEL M. CRAWFORD

By: 

Daniel M. Crawford  
Attorneys for Defendants

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: 

Samantha W. Zutler  
Attorneys for Defendants

**CASE MANAGEMENT ORDER**

The Case Management Statement and Proposed Order are hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition, the Court orders:

Dated: October \_\_\_\_, 2007

HON. WILLIAM H. ALSUP  
United States District Court Judge

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